

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0530P

**Sales and Withholding Tax
January 1998 and April 1998**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was assessed a late filing penalty for sales tax in January and April 1998 and for withholding tax for April 1998. The taxpayer protested the assessments and the department waived the penalty for the April 1998 sales tax because the department did not have the postmark available. The letter dated September 2, 1998 is the taxpayer's third attempt to have the penalty deleted although the department has twice denied the taxpayer. Taxpayer requested a hearing.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer was assessed late filing penalties. In a letter dated August 18, 1998 the taxpayer reprotested a denial of penalty waiver explaining that each month, the withholding and sales tax payments are mailed at the exact time and for the past six years, they have never been late with either payment. Taxpayer states, the withholding and sales tax payments are sent at the same time, therefore he does not understand why one was late and one not. Taxpayer further states that his secretary mailed the April payments late due to a mistake and that there was no intent or laxity involved in these payments being late. Further he states they have taken steps to ensure that all payments will be mailed well before the

due date. Taxpayer requests a penalty waiver due to honest mistakes and they understand having to pay a penalty for being negligent or not have the resources to make the payments on time.

The department has already waived a penalty because it was unable to find a Federal postmark for the April 1998 sales tax return. In addition, the taxpayer had a late payment for sales tax covering the March 1994 period that was paid. Although the late payment may not have been intentional, the fact remains that these payments were late. The taxpayer has twenty days in which to remit payments timely and should ensure that it does so.

The Indiana Code and Regulations are clear regarding late filing penalties.

The department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.